

THOMAS J. BALBONI, JR.,	)	
	)	
Petitioner,	)	3:11-cv-00457-RCJ-VPC
	)	
vs.	)	<b>ORDER</b>
	)	
RENEE BAKER, <i>et al.</i> ,	)	
	)	
Respondents.	)	
	/	

## I. Motions for Recusal

After the entry of judgment in this case, petitioner filed two motions seeking recusal of the undersigned. (ECF Nos. 50 & 52). “In determining whether recusal is appropriate, the Court should look toward whether a reasonable person with the knowledge of all the facts would conclude that the judge’s impartiality might reasonably be questioned.” *Mayes v. Leipziger*, 729 F.2d 605, 607 (9<sup>th</sup>

1 Cir. 1984). Moreover, any alleged bias or prejudice must have arisen from an extrajudicial source.  
 2 *Id.* A party seeking to recuse a judge under 28 U.S.C. § 144 must submit a legally sufficient affidavit  
 3 detailing the circumstances warranting recusal. “An affidavit filed pursuant to that section is not  
 4 legally sufficient unless it specifically alleges facts that fairly support the contention that the judge  
 5 exhibits bias or prejudice directed toward a party that stems from an extrajudicial source.” *U.S. v.*  
 6 *Sibla*, 624 F.2d 864, 868 (9<sup>th</sup> Cir. 1980). In the instant case, petitioner has not presented a sufficient  
 7 affidavit to meet the standard for recusal. Petitioner merely makes a conclusory assertion of bias,  
 8 which is insufficient. Petitioner’s motions for recusal of the undersigned are denied.

## 9 **II. Motions for Reconsideration**

10 Petitioner has filed two motions for reconsideration of this Court’s dismissal of the petition.  
 11 (ECF Nos. 45 & 47).

12 Where a ruling has resulted in final judgment or order, a motion for reconsideration may be  
 13 construed either as a motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure  
 14 59(e), or as a motion for relief from judgment pursuant to Federal Rule 60(b). *School Dist. No. 1J*  
 15 *Multnomah County v. AC&S, Inc.*, 5 F.3d 1255, 1262 (9<sup>th</sup> Cir. 1993), *cert. denied* 512 U.S. 1236  
 16 (1994). Under Fed. R. Civ. P. 60(b) the court may relieve a party from a final judgment or order for  
 17 the following reasons:

18 (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly  
 19 discovered evidence which by due diligence could not have been  
 20 discovered in time to move for a new trial under Rule 59(b); (3) fraud  
 21 (whether heretofore denominated intrinsic or extrinsic),  
 22 misrepresentation, or other misconduct of an adverse party; (4) the  
 23 judgment is void; (5) the judgment has been satisfied, released, or  
 24 discharged, or a prior judgment upon which it is based has been  
 25 reversed or otherwise vacated, or it is no longer equitable that the  
 26 judgment should have prospective application; or (6) any other reason  
 justifying relief from the operation of the judgment.

Motions to reconsider are generally left to the discretion of the trial court. *See Combs v. Nick*  
*Garin Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987). In order to succeed on a motion to reconsider,

1 a party must set forth facts or law of a strongly convincing nature to induce the court to reverse its  
2 prior decision. *See Kern-Tulare Water Dist. v. City of Bakersfield*, 634 F. Supp. 656, 665 (E.D. Cal.  
3 1986), *aff'd in part and rev'd in part on other grounds* 828 F.2d 514 (9<sup>th</sup> Cir. 1987).


4 Rule 59(e) of the Federal Rules of Civil Procedure provides that any “motion to alter or  
5 amend a judgment shall be filed no later than 28 days after entry of the judgment.” Furthermore, a  
6 motion under Fed. R. Civ. P. 59(e) “should not be granted, absent highly unusual circumstances,  
7 unless the district court is presented with newly discovered evidence, committed clear error, or if  
8 there is an intervening change in the controlling law.” *Herbst v. Cook*, 260 F.3d 1039, 1044 (9<sup>th</sup> Cir.  
9 2001), *quoting McDowell v. Calderon*, 197 F.3d 1253, 1255 (9<sup>th</sup> Cir. 1999). Federal courts have  
10 determined that there are four grounds for granting a Rule 59(e) motion: (1) the motion is necessary  
11 to correct manifest errors of law or fact upon which the judgment is based; (2) the moving party  
12 presents newly discovered or previously unavailable evidence; (3) the motion is necessary to prevent  
13 manifest injustice; or (4) there is an intervening change in controlling law. *Turner v. Burlington*  
14 *Northern Santa Fe R. Co.*, 338 F.3d 1058 (9<sup>th</sup> Cir. 2003).

15 In the instant case, this Court properly entered judgment dismissing this action in the order  
16 filed September 21, 2012. (ECF No. 43). In his motions for reconsideration, petitioner has not  
17 identified any mistake, intervening change in controlling law, or other factor that would require  
18 vacating the judgment. Petitioner has not shown that manifest injustice resulted from dismissal of  
19 the action. Petitioner also has not presented newly discovered or previously unavailable evidence.  
20 Petitioner has failed to make an adequate showing under either Rule 59(e) or Rule 60(b) to justify  
21 granting his motions for reconsideration.

22 **IT IS THEREFORE ORDERED** that petitioner’s motions for recusal (ECF Nos. 50 & 52)  
23 are **DENIED**.

24 **IT IS THEREFORE ORDERED** that petitioner’s motions for reconsideration (ECF Nos.  
25 45 & 47) are **DENIED**.

Dated this 30th day of August, 2013.

  
UNITED STATES DISTRICT JUDGE